

“MANUFACTURING LICENSE”
APPLICATION CHECKLIST

Winery License [] Distillery License [] Brewery License []

The items below should be completed and submitted by the **10th of the month** or earlier, so that your application can be processed in a timely manner. All licensing requirements must be fully satisfied in order to complete your application. You will be notified of the next monthly Utah Alcoholic Beverage Control Commission meeting when your application will be considered for issuance of a license.

- 1.____ Completed application (form enclosed).
- 2.____ Ownership entity organizational papers for business:
 - a) if a corporation, submit a copy of articles of incorporation;
 - b) if a partnership, submit a copy of written agreement;
 - c) if a limited liability company, submit a copy of the articles of organization.
- 3.____ Criminal history background check information (see application).
- 4.____ Written consent from city/town council or county commission, whichever is applicable (form enclosed).
- 5.____ Copy of current local business license.
- 6.____ Copy of Alcohol and Tobacco Tax and Trade Bureau permit.
- 7.____ **\$10,000** manufacturing cash or corporate surety bond (form enclosed).
- 8.____ **Certificate** of public liability insurance.
- 9.____ Scaled floor plan (8 1/2”x11”) of premises highlighting the area where alcoholic products will be produced, stored, etc.
- 10.____ **\$250** application fee (non refundable).
- 11.____ **\$3,250** initial licensing fee (make checks payable to UDABC).

Enclosed are copies of the Utah laws and commission rules pertaining to manufacturing licensees. If you have any questions concerning these forms or the application process, please contact our DABC Licensing and Compliance Division at (801) 977-6800.

Winery License [] Distillery License [] Brewery License []

- | TITLE | NAME | HOME ADDRESS | HOME PHONE# | DR LIC# | SS# | DOB | %OWNED |
|-------|------|--------------|-------------|---------|-----|-----|--------|
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TITLE	NAME	HOME ADDRESS	HOME PHONE#	DR LIC#	SS#	DOB	%OWNED
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10. **Criminal History.** The law prohibits any person who has been convicted of a felony under any federal or state law or any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages from being in the alcoholic beverage business. The law also prohibits any person who has been convicted of any crime involving moral turpitude or, on two or more occasions within the last five years, has been convicted of driving under the influence of alcohol, or any drug, or the combination of alcohol and any drug from being in the alcohol business. This proscription also applies to any officers, partners, managers, managing agents, directors, stockholders who hold at least 20% of the total issued and outstanding stock of an applicant corporation, members who own at least 20% of an applicant limited liability company and to any person employed to act in a supervisory or managerial capacity.

Please list *all* criminal offenses *other than minor traffic offenses* of which you or any of the above persons have ever been convicted: (also include any pending criminal charges).

<u>NAME</u>	<u>CRIMINAL OFFENSE</u>	<u>DATE OF CONVICTION</u>
_____	_____	_____
_____	_____	_____

In addition, a criminal history background check must be furnished on each person listed above and in subparagraph 5. This may be done as follows:

a. Utah residents: If any person listed has been a **resident of Utah for at least two years**, he/she shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.

b. Non Residents: Out of state residents or persons who have resided in Utah for less than two years shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the **Federal Bureau of Investigation (F.B.I.)**.

An informed consent and release of liability form is included with this application.

Fingerprint cards are available at law enforcement agencies. You may download the fingerprint card at this web address: <http://www.fbi.gov/hq/cjisd/pdf/fpcardb.pdf>

Submit the form(s) to the DABC with a processing fee of:

- \$15.00 per card for BCI background checks, or
- \$34.25 per card for FBI background checks.

In the case of an undue delay in the processing of an F.B.I. criminal background check, here are the rules and procedures for obtaining a third-party national background check: An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

- 1). the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the F.B.I. criminal history background report(s);
- 2). the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in the application that would disqualify the applicant from applying for and holding the license, permit, or package agency;
- 3). the applicant has submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.
- 4). the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and

5). the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

A suggested attestation/stipulation letter that satisfies the above requirements is enclosed.

A third-party national criminal background check can be obtained by;

- searching the yellow pages under Background Screening
- searching the internet under Background Screening or Background Checks

Because the DABC is State Agency, we cannot recommend any one background screening service over another. It is your responsibility however, to obtain the most complete, nationwide, criminal history available for the application process.

11. Applicant agrees to immediately notify the department of any change in ownership, management, and if a corporation, any change in the officers/directors, and understands that failure to do so may result in immediate suspension of license.
12. Have you as an applicant, or proprietor, partner, managing agent, director, officer, stockholder owning at least 20% corporation stock, or if a limited liability company, any member owning at least 20% of the company, had a state alcoholic beverage license, permit, or agency revoked within the last three years?_____ If so, please explain._____

13. Please supply all applicable numbers:

Utah State Sales Tax # _____

Utah State Payroll Withholding # _____

Utah State Dept Workforce Services # _____

Federal IRS Taxpayer ID # _____

* Federal ATTTB (formerly BATF) Identification # _____

Type of Federal ATTTB (Formerly BATF) Permit _____

** ATTTB: Alcohol and Tobacco Tax and Trade Bureau.*

14. List types and brands of alcoholic beverages to be produced:_____

15. By signing below, the applicant attests that:

a) the proprietor/applicant is at least 21 years of age.

b) consent is granted to representatives of the Alcoholic Beverage Control Department, Commission, State Bureau of Investigation (Bureau of Alcoholic Beverage Law Enforcement), and other law enforcement agencies to be admitted immediately and permitted without hindrance or delay to inspect the entire premises and all records of the licensee.

c) he/she has read and will abide by the provisions of Title 32A, Utah Code, and all rules of the commission and directives of the Department of Alcoholic Beverage Control; and understands that failure to adhere thereto or to no longer possess the qualifications of a licensee may result in suspension or revocation of the liquor license and forfeiture of compliance bond.

d) the applicant does not and will not discriminate against persons on the basis of race, color, sex, religion, ancestry, or national origin.

16. The undersigned hereby makes application to the Utah Alcoholic Beverage Control Commission for a manufacturing license and certifies that the information contained herein and attached hereto is true and correct.

Date: _____

Applicant/owner of business

Authorized signature

Name/title

STATE OF _____

COUNTY OF _____

Subscribed & sworn to before me this _____ day of

_____, _____.

Notary Public

SEAL:

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
(Manufacturing)**

LOCAL CONSENT

Date: _____

Utah Department of Alcoholic Beverage Control
Licensing & Compliance Section
1625 So 900 West
PO Box 30408
Salt Lake City, Utah 84130-0408

_____(City)(Town)(County) hereby
grants its consent to the issuance of a manufacturing license to _____
_____, Brewery/Distillery/Winery located at _____
_____, pursuant to the provisions of Section 32A-8,
Utah Code, for the purpose of importation, production, sale, and/or other lawful use of alcohol
beverage products as authorized by the Utah Department of Alcoholic Beverage Control.

Authorized Signature

Name/Title

INFORMED CONSENT AND RELEASE OF LIABILITY

PURPOSE: To determine, in accordance with Utah Code 32A-1-702 and 32A-1-703, if an applicant with the Department of Alcoholic Beverage Control has been:

- convicted of a felony under federal or state law;
- convicted of a violation of a federal law, state law, or local ordinance concerning the sale, manufacture, distribution, warehousing, or transportation of an alcoholic beverage;
- convicted of a crime involving moral turpitude;
- convicted on two or more occasions within the previous five years, driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug.

RELEASE

I hereby authorize the Department of Alcoholic Beverage Control (DABC) to investigate my criminal history records to ascertain any and all information which may be pertinent to my qualifications as an applicant with the DABC. The release of any and all information is authorized whether it is of record or not, and I do hereby release all persons, firms, agencies, companies, groups or installations, whomsoever, from any damages of or resulting from, furnishing such information to the DABC. I further agree that a copy of this release will remain in my application file.

Name (please print; last, first, middle initial)

Formerly used last names (please print)

Applicant/ doing business as

Signature

Date

(suggested attestation/stipulation letter to the DABC for a third-party national criminal background check)

Date: _____

To whom it may concern:

I, _____, attest:

- 1. That I have submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.**
- 2. That I am not aware of any criminal conviction that would disqualify me from applying for and holding a Utah Department of Alcoholic Beverage Control license or permit.**

I stipulate that if an F.B.I. report shows a criminal conviction that would disqualify me from holding the license, permit, or package agency, I shall immediately surrender the license, permit, or package agency to the department.

I am enclosing a national criminal history background report from a third party background check reporting service.

Signature

Name/Title

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

Chapter 8 - Manufacturing Licenses

PART 1

GENERAL PROVISIONS

32A-8-101. Commission's power to grant licenses -- Limitations.

(1) The commission may issue an alcoholic beverage manufacturing license to a manufacturer whose business in this state is located in this state for the manufacture, storage, and sale of alcoholic beverages for each type of license provided by this chapter.

(2) The type of manufacturing licenses issued under this chapter are known as a:

- (a) winery license;
- (b) distillery license; and
- (c) brewery license.

(3) (a) A person may not manufacture an alcoholic beverage unless an alcoholic beverage manufacturing license is issued by the commission.

(b) A separate license is required for each place of manufacture, storage, and sale of an alcoholic beverage.

(c) Violation of this Subsection (3) is a class B misdemeanor.

(4) (a) A brewer located outside the state is not required to be licensed under this chapter.

(b) A brewer described in Subsection (4)(a) must obtain a certificate of approval from the department before selling or delivering:

- (i) beer to a licensed beer wholesaler in this state;
- (ii) on or after October 1, 2008, a flavored malt beverage to the department or a military installation; or
- (iii) if a small brewer, beer to a licensed beer wholesaler or retailer in this state.

(c) A brewer seeking a certificate of approval shall file a written application with the department, in a form prescribed by the department. The application shall be accompanied by:

- (i) a nonrefundable \$50 application fee;
 - (ii) an initial certificate of approval fee of \$250 that is refundable if a certificate is not granted;
 - (iii) evidence of authority from the United States Bureau of Alcohol, Tobacco, and Firearms to brew beer, heavy beer, or a flavored malt beverage; and
 - (iv) any other information or documents the department may require.
- (d) (i) An application shall be signed and verified by oath or affirmation by:
- (A) a partner if the brewer is a partnership; or
 - (B) an executive officer, manager, or person specifically authorized by a corporation or limited liability company to sign the application.

(ii) The brewer filing an application shall attach to the application written evidence of the authority of the person described in Subsection (4)(d)(i) to sign the application.

(e) (i) All certificates of approval expire on December 31 of each year.

(ii) A brewer desiring to renew its certificate shall submit a renewal fee of \$200, and a completed renewal application to the department no later than November 30 of the year the certificate expires.

(iii) Failure to meet the renewal requirements results in an automatic forfeiture of the certificate effective on the date the existing certificate expires.

(iv) A renewal application shall be in a form prescribed by the department.

(5) The commission may prescribe by policy, directive, or rule, consistent with this title, the general operational requirements of licensees relating to:

- (a) physical facilities;
- (b) conditions of sale, storage, or manufacture of alcoholic beverages;
- (c) storage and sales quantity limitations; and
- (d) other matters considered appropriate by the commission.

32A-8-102. APPLICATION AND RENEWAL REQUIREMENTS.

(1) Each person seeking an alcoholic beverage manufacturing license of any kind under this chapter shall file a written application with the department, in a form prescribed by the department. The application shall be accompanied by:

- (a) a nonrefundable application fee of \$250;
- (b) an initial license fee of \$3,250 unless otherwise provided in this chapter, which is refundable if a license is not granted;
- (c) a statement of the purpose for which the applicant has applied for the alcoholic beverage manufacturing license;
- (d) written consent of the local authority;
- (e) a bond as specified by Section 32A-8-105;
- (f) evidence that the applicant is carrying public liability insurance in an amount and form satisfactory to the department;
- (g) evidence that the applicant is authorized by the United States to manufacture alcoholic beverages;
- (h) a signed consent form stating that the licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises;
- (i) in the case of an applicant that is a partnership, corporation, or limited liability company, proper verification evidencing that the person or persons signing the application are authorized to so act on behalf of the partnership, corporation, or limited liability company; and
- (j) any other documents and evidence the department may require by rule or policy to allow complete evaluation of the application.

(2)(a) All alcoholic beverage manufacturing licenses expire on December 31 of each year.

(b) Persons desiring to renew their license shall submit by no later than November 30 of the year the license expires:

- (i) a completed renewal application to the department; and
- (ii) a renewal fee in the following amount:
 - (A) \$2,500, except for an alcoholic beverage manufacturing license described in Subsection (2)(b)(ii)(B); or
 - (B) \$1,200 for a winery license if the winery licensee produced less than 20,000 gallons of wine in the calendar year preceding the year in which the licensee seeks renewal.

(c) Failure to meet the renewal requirements results in an automatic forfeiture of the license effective on the date the existing license expires. Renewal applications shall be in a form prescribed by the department.

(3) To ensure compliance with Subsection 32A-8-106(6), the commission may suspend or revoke an alcoholic beverage manufacturing license if the manufacturing licensee does not immediately notify the department of any change in:

- (a) ownership of the licensee;
- (b) for a corporate owner, the:
 - (i) corporate officers or directors; or
 - (ii) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (c) for a limited liability company:
 - (i) managers; or
 - (ii) members owning at least 20% of the limited liability company.

32A-8-103. Qualifications.

(1) (a) The commission may not grant an alcoholic beverage manufacturing license to any person who has been convicted of:

- (i) a felony under any federal or state law;
- (ii) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
- (iii) any crime involving moral turpitude; or
- (iv) on two or more occasions within the five years before the day on which the license is granted,

driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.

(b) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1)(a) applies if any of the following has been convicted of any offense described in Subsection (1)(a):

- (i) a partner;
- (ii) a managing agent;
- (iii) a manager;
- (iv) an officer;
- (v) a director;
- (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or
- (vii) a member who owns at least 20% of the applicant limited liability company.

(c) The proscription under Subsection (1)(a) applies if any person employed to act in a supervisory or managerial capacity for the manufacturer has been convicted of any offense described in Subsection (1)(a).

(2) The commission may immediately suspend or revoke an alcoholic beverage manufacturing license if after the day on which the alcoholic beverage manufacturing license is granted, a person described in Subsection (1)(a), (b), or (c):

(a) is found to have been convicted of any offense described in Subsection (1)(a) prior to the license being granted; or

(b) on or after the day on which the license is granted:

- (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
- (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and
- (B) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may take emergency action by immediately suspending the operation of the licensee according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

- (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or
- (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and
- (ii) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not grant a manufacturing license to any person who has had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) The commission may not grant a manufacturing license to any applicant that is a partnership, corporation, or limited liability company if any partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation, or member who owns at least 20% of the applicant limited liability company is or was:

(A) a partner or managing agent of any partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of the limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(b) An applicant that is a partnership, corporation, or limited liability company may not be granted a manufacturing license if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

- (i) any partner or managing agent of the applicant partnership;
- (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the total issued

and outstanding stock of the applicant corporation; or

(iii) any manager or member who owns at least 20% of the applicant limited liability company.

(c) A person acting in an individual capacity may not be granted a manufacturing license if that person was:

(i) a partner or managing agent of a partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(iii) a manager or member who owned at least 20% of a limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(5) (a) A minor may not be:

(i) granted an alcoholic beverage manufacturing license; or

(ii) employed by a manufacturing licensee to handle alcoholic beverages.

(b) The commission may not grant an alcoholic beverage manufacturing license to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company.

(6) The commission may not grant an alcoholic beverage manufacturing license to any person who has not met any applicable federal requirements for the operation of wineries, distilleries, or breweries.

(7) If any person to whom a license has been issued under this chapter no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

32A-8-104. DUTIES OF COMMISSION AND DEPARTMENT BEFORE ISSUING LICENSES.

(1) Before any alcoholic beverage manufacturing license may be granted by the commission, the department shall conduct an investigation and may hold public hearings for the purpose of gathering information and making recommendations to the commission as to whether or not a license should be granted. This information shall be forwarded to the commission to aid in its determination.

(2) Before issuing any alcoholic beverage manufacturing license, the commission shall:

(a) determine that the applicant has complied with all basic qualifications and requirements for making application for a license as provided by Sections 32A-8-102 and 32A-8-103, and that the application is complete;

(b) consider the applicant's ability to properly utilize the manufacturing license within the restrictions of this title and the commission rules including, but not limited to, manufacturing capacity, extent of product distribution, and the nature and type of organization making use of the license;

(c) consider the physical characteristics of the premises where alcoholic beverages are proposed to be manufactured, mixed, or stored, such as condition of the premises and safety and security considerations;

(d) consider any special factors or circumstances as provided in this chapter that may be unique to the specific type of license sought by the applicant;

(e) approve of the location and equipment utilized by the applicant to manufacture alcoholic beverages; and

(f) consider any other factors or circumstances it considers necessary.

32A-8-105. BOND.

(1) Each manufacturing licensee shall post a cash or corporate surety bond in the penal sum of \$10,000 payable to the department, which the licensee has procured and must maintain for so long as the licensee continues to operate as an alcoholic beverage manufacturing licensee.

(2) The bond shall be in a form approved by the attorney general, conditioned upon the licensee's faithful compliance with this title and the rules of the commission.

(3) If the surety bond is cancelled due to the licensee's negligence, a \$300 reinstatement fee may be assessed. No part of any cash or corporate bond so posted may be withdrawn during the period the manufacturing license is in effect. A bond filed by a licensee may be forfeited if the manufacturing license is finally revoked.

32A-8-106. OPERATIONAL RESTRICTIONS.

Each person granted an alcoholic beverage manufacturing license and the employees and management of the licensee shall abide by the following conditions and requirements, and any special conditions and restrictions otherwise provided in this chapter. Failure to comply may result in a suspension or revocation of the license or other disciplinary action taken against individual employees or management personnel.

(1) A licensee may not sell any liquor within the state except to the department and to military installations.

(2) Each license issued under this chapter shall be conspicuously displayed on the licensed premises.

(3) A licensee may not advertise its product in violation of this title or any other federal or state law, except that nothing in this title prohibits the advertising or solicitation of orders for industrial alcohol from holders of special permits.

(4)(a) Each alcoholic beverage manufacturing licensee shall maintain accounting and other records and documents as the department may require.

(b) A manufacturing licensee or person acting for the manufacturing licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, or the department, or any of their officials or employees, is subject to:

- (i) the immediate suspension or revocation of the manufacturing license; and
- (ii) criminal prosecution under Chapter 12, Criminal Offenses.

(5) An alcoholic beverage manufacturing license may not be transferred from one location to another, without prior written approval of the commission.

(6)(a) A manufacturing licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to any other person or entity, whether for monetary gain or not.

(b) A manufacturing license has no monetary value for the purpose of any type of disposition.

(7) Each licensee shall from time to time, on request of the department, furnish for analytical purposes samples of the alcoholic products that it has for sale or that it has in the course of manufacture for sale in this state.

PART 2 WINERY LICENSES

32A-8-201. AUTHORITY AND OPERATIONAL RESTRICTIONS.

(1) A winery license authorizes the licensee to:

- (a) import, manufacture, store, transport, or export wines;
- (b) sell wines at wholesale to the department and to out-of-state customers;
- (c) purchase liquor for fortifying wine, if the department is notified of the purchase and date of delivery; and
- (d) warehouse on its premises liquor that has been manufactured or purchased for manufacturing purposes.

(2) All wine, brandy, wine spirits, or other liquor imported under authority of a winery license shall conform to the standards of identity and quality established in the Federal Alcohol Administration regulations.

(3) If considered necessary, the commission or department may:

- (a) require certain alterations to the plant, equipment, or premises;
- (b) require the alteration or removal of any unsuitable wine-making equipment or material;

- (c) require a licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of any plant, premises, and wine-making equipment;
 - (d) demand that any marc, pomace, or fruit considered unfit for wine making, or producing or likely to produce an unsanitary condition, be destroyed, denatured, or removed from the premises;
 - (e) require a licensee to distill or cause to be distilled or disposed of under the department's supervision, any unsound, poor quality finished wine, or unfinished wine that will not be satisfactory when finished; or
 - (f) demand that all books, records, or data pertaining to the grapes and other materials and ingredients used in the manufacture of wine, are available to the commission or department upon request.
- (4) A winery licensee may not permit any wine to be consumed on its premises, except under the following circumstances:
- (a) A winery licensee may allow its employees to consume on the premises wine as the wine maker may furnish to them without charge.
 - (b) A winery licensee may allow any person who can lawfully buy wine for wholesale or retail distribution to consume bona fide samples of its product on the winery premises.
 - (c) A winery licensee may operate on its manufacturing premises a retail facility allowing consumption, of samples on premises, of wine as long as food is also available. Any such retail facility located on the premises of a winery licensee shall be operated or supervised by the winery licensee.
- (5) The federal definitions, standards of identity, and quality and labeling requirements for wine, in the Federal Alcoholic Administration regulations, and amendments made to that document, are adopted to the extent they are not contrary to or inconsistent with the laws of this state.

PART 3

DISTILLERY LICENSES

32A-8-301. DISTILLERY LICENSE -- SPECIFIC AUTHORITY AND RESTRICTIONS.

- (1) A distillery license allows the licensee to:
 - (a) import, manufacture, store, transport, or export liquor;
 - (b) sell liquor to the department and to out-of-state customers;
 - (c) purchase alcoholic products for blending and manufacturing purposes if the department is notified of the purchase and the date of delivery; and
 - (d) warehouse on its premises alcoholic products which it manufactures or purchases for manufacturing purposes.
- (2) Any alcoholic product may be sold by a distiller directly to any person engaged within the state in a mechanical or industrial business, or in scientific pursuits that require the use of alcoholic products. The buyer shall hold a valid special permit from the department authorizing the use of alcoholic products. The manufacturer may sell to the permittee alcoholic products only in types as the permit shall state. The sale of alcoholic products for this purpose is subject to rules as may be prescribed by the department and the federal government.
- (3) If considered necessary, the commission or department may:
 - (a) require certain alterations to the plant, equipment, or premises;
 - (b) require the alteration or removal of any unsuitable alcoholic beverage-making equipment or material;
 - (c) require the licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of any plant, premises, and equipment; or
 - (d) demand that all books, records, or data pertaining to the materials and ingredients used in the manufacture of alcoholic products be made available to the commission or department upon request.
- (4)(a) A distillery licensee may not permit any alcoholic beverage to be consumed on its premises, except that a distillery may allow its employees to consume on its premises alcoholic products as the distillery may furnish to them without charge.
- (b) A distillery licensee may allow any person who can lawfully buy alcoholic beverages for wholesale or retail distribution to consume bona fide samples of its product on the distillery premises.

(5) The federal definitions, standards of identity and quality and labeling requirements for distilled liquor, in the Federal Alcoholic Administration regulations, and the amendments thereto, are adopted to the extent they are not contrary to or inconsistent with laws of this state.

PART 4

BREWERY LICENSES

32A-8-401. Authority and operational restrictions.

- (1) A brewery license allows the licensee to:
 - (a) manufacture, brew, store, transport, or export beer, heavy beer, and flavored malt beverages;
 - (b) sell heavy beer and, on or after October 1, 2008, a flavored malt beverage to:
 - (i) the department;
 - (ii) a military installation; and
 - (iii) an out-of-state customer;
 - (c) sell beer to a licensed wholesaler;
 - (d) in the case of a small brewer, sell in accordance with Subsection (5), beer manufactured by the brewer to:
 - (i) a licensed retailer;
 - (ii) a holder of a single event permit issued by the commission pursuant to Chapter 7, Single Event Permits; and
 - (iii) a holder of a temporary retail beer permit issued by the commission for a temporary special event pursuant to Chapter 10, Part 3, Temporary Special Event Beer Permits; and
 - (e) warehouse on its premises an alcoholic beverage that it manufactures or purchases for manufacturing purposes.
- (2) If considered necessary, the commission or department may:
 - (a) require certain alterations to the plant, equipment, or premises;
 - (b) require the alteration or removal of any unsuitable alcoholic beverage-making equipment or material;
 - (c) require the licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of any plant, premises, and equipment; or
 - (d) demand that all books, records, or data pertaining to the materials and ingredients used in the manufacture of alcoholic products are available to the commission or department upon request.
- (3) A brewery licensee may not sell the following to any person within the state except the department or a military installation:
 - (a) heavy beer; or
 - (b) on or after October 1, 2008, a flavored malt beverage.
- (4) A brewery licensee may not permit any beer, heavy beer, or flavored malt beverage to be consumed on its premises, except under the circumstances described in this Subsection (4).
 - (a) A brewer may allow its off-duty employees to consume beer, heavy beer, or a flavored malt beverage on its premises without charge.
 - (b) A brewery licensee may allow any person who can lawfully buy the following for wholesale or retail distribution to consume bona fide samples of its product on the brewery premises:
 - (i) beer;
 - (ii) heavy beer; or
 - (iii) on or after October 1, 2008, a flavored malt beverage.
 - (c) (i) A brewery licensee may operate on its manufacturing premises a retail facility allowing consumption on premises of beer in bottles or draft as long as food is also available.
 - (ii) A retail facility located on the premises of a brewery licensee shall be operated or supervised by the brewer.
 - (iii) In operating an on-site retail facility, a brewery licensee shall comply with the requirements of Sections **32A-10-101** and **32A-10-102**.
- (5) (a) A small brewer licensee located in this state, and a small brewer located outside this state that obtains a certificate of approval from the department to sell beer in this state under Subsection **32A-8-101(4)**, that sells beer manufactured by the small brewer directly to a retailer licensee or permittee shall own, lease, or maintain and control a warehouse facility located in this state for the

storage of all beer to be sold to any retailer licensee or permittee.

(b) A small brewer may not sell beer to a retailer licensee or permittee unless the beer:

(i) is manufactured by the small brewer; and

(ii) is first placed in the small brewer's warehouse facility in this state.

(c) (i) A small brewer warehouse shall maintain complete beer importation, inventory, tax, distribution, sales records, and other documents as the department and State Tax Commission may require.

(ii) The records and documents described in Subsection (5)(c)(i) are subject to inspection by:

(A) the department; and

(B) the State Tax Commission.

(iii) A small brewer or person acting for the small brewer, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes a record or document required to be made, maintained, or preserved by this title or the rules of the commission, or State Tax Commission for the purpose of deceiving the commission, department, State Tax Commission, or any of their officials or employees, is subject to:

(A) the immediate suspension or revocation of:

(I) the brewery license; or

(II) the certificate of approval; and

(B) possible criminal prosecution under Chapter 12, Criminal Offenses.

Part 5

Local Industry Representative Licenses

32A-8-501. Commission's power to grant licenses.

(1) The commission may issue a local industry representative license to an individual resident of Utah, Utah partnership, Utah corporation, or Utah limited liability company who is employed by a manufacturer, supplier, or importer, whether compensated by salary, commission, or another means, to represent liquor products with the department, package agencies, licensees, and permittees under this title including:

(a) wine;

(b) heavy beer; or

(c) on or after October 1, 2008, a flavored malt beverage.

(2) (a) Before a person described in Subsection (1) may represent an alcoholic product of a manufacturer, supplier, or importer, the person shall obtain a local industry representative license from the commission as provided in this part.

(b) A violation of this Subsection (2) is a class B misdemeanor.

(3) An individual employee or agent of a local industry representative licensee is not required to be separately licensed.

(4) A local industry representative may represent more than one manufacturer, supplier, or importer at a time.

(5) (a) A manufacturer, supplier, or importer is not required to use a local industry representative to represent its products with the department, package agencies, licensees, or permittees.

(b) An employee or agent of the manufacturer, supplier, or importer who is not a local industry representative while in the state shall first register with the department, on forms provided by the department, before representing alcoholic beverage products with the department, package agencies, licensees, and permittees of the department.

(c) A manufacturer, supplier, or importer described in Subsection (5)(b) and its employees and agents are subject to the same operational restrictions of this part and Chapter 12, Criminal Offenses.

32A-8-502. APPLICATION AND RENEWAL REQUIREMENTS.

(1) An individual resident, partnership, corporation, or limited liability company seeking a local industry representative license under this chapter shall file a written application with the department, in a form prescribed by the department. The application shall be accompanied by:

- (a) a nonrefundable \$50 application fee;
- (b) an initial license fee of \$100, which is refundable if a license is not granted;
- (c) verification that the applicant is:
 - (i) a resident of Utah;
 - (ii) a Utah partnership;
 - (iii) a Utah corporation; or
 - (iv) a Utah limited liability company;
- (d) an affidavit stating the name and address of all manufacturers, suppliers, and importers the applicant will represent;

(e) a signed consent form stating that the local industry representative will permit any authorized representative of the commission, department, or any law enforcement officer the right to enter, during normal business hours, the specific premises where the representative conducts business;

(f) in the case of an applicant that is a partnership, corporation, or limited liability company, proper verification evidencing that the person or persons signing the application are authorized to so act on behalf of the partnership, corporation, or a limited liability company; and

(g) any other information the commission or department may require.

(2)(a) All local industry representative licenses expire on January 1 of each year.

(b) Licensees desiring to renew their license shall submit a renewal fee of \$100 and a completed renewal application to the department no later than November 30.

(c) Failure to meet the renewal requirements shall result in an automatic forfeiture of the license effective on the date the existing license expires.

(d) Renewal applications shall be in a form as prescribed by the department, but shall require the licensee to file an affidavit stating the name and address of all manufacturers, suppliers, and importers the licensee currently represents.

(3) A licensed local industry representative may represent more than one manufacturer, supplier, or importer without paying additional license fees.

(4) In order to ensure compliance with Subsection 32A-8-505(8), the commission may suspend or revoke a local representative license if a local industry representative licensee does not immediately notify the department of any change in:

- (a) ownership of the business;
- (b) for a corporate owner, the:
 - (i) corporate officers or directors; or
 - (ii) shareholders holding at least 20% of the total issued and outstanding stock of the corporation;

or

- (c) for a limited liability company:
 - (i) managers; or
 - (ii) members owning at least 20% of the limited liability company.

32A-8-503. Qualifications.

(1) (a) The commission may not grant a local industry representative license to a person who has been convicted of:

- (i) a felony under any federal or state law;
- (ii) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, importing, warehousing, adulteration, or transportation of alcoholic beverages;
- (iii) any crime involving moral turpitude; or
- (iv) on two or more occasions within the five years before the day on which the license is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.

(b) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1)(a) applies if any of the following has been convicted of any offense described in Subsection (1)(a):

- (i) a partner;
- (ii) a managing agent;
- (iii) a manager;
- (iv) an officer;

- (v) a director;
 - (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or
 - (vii) a member who owns at least 20% of the applicant limited liability company.
- (c) The proscription under Subsection (1)(a) applies if any person employed to act in a supervisory or managerial capacity for the local industry representative has been convicted of any offense described in Subsection (1)(a).
- (2) The commission may immediately suspend or revoke the local industry representative license if after the day on which the local industry representative license is granted, a person described in Subsection (1)(a), (b), or (c):
- (a) is found to have been convicted of any offense described in Subsection (1)(a) prior to the license being granted; or
 - (b) on or after the day on which the license is granted:
 - (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and
 - (B) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).
- (3) The director may take emergency action by immediately suspending the operation of the local industry representative license according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):
- (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and
 - (ii) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).
- (4) (a) (i) The commission may not grant a local industry representative license to an individual who has had any type of license, agency, or permit issued under this title revoked within the last three years.
- (ii) The commission may not grant a local industry representative license to an applicant that is a partnership, corporation, or limited liability company if any partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of an applicant corporation, or member who owns at least 20% of an applicant limited liability company is or was:
- (A) a partner or managing agent of any partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;
 - (B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or
 - (C) a manager or member who owns or owned at least 20% of any limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.
- (b) An applicant that is a partnership, corporation, or limited liability company may not be granted a local industry representative license if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:
- (i) a partner or managing agent of the applicant partnership;
 - (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or
 - (iii) a manager or member who owns at least 20% of the applicant limited liability company.
- (c) A person acting in an individual capacity may not be granted an industry representative license if that person was:
- (i) a partner or managing agent of a partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;
 - (ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(iii) a manager or member who owned at least 20% of a limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(5) (a) The commission may not grant a local industry representative license to a minor.

(b) The commission may not grant a local industry representative license to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company.

(6) Except as otherwise provided, the commission may not grant a local industry representative license to:

(a) a holder of any retail license issued under this title that sells:

(i) spirituous liquor;

(ii) wine;

(iii) heavy beer; or

(iv) on or after October 1, 2008, a flavored malt beverage;

(b) an employee or agent of any retail license issued under this title that sells:

(i) spirituous liquor;

(ii) wine;

(iii) heavy beer; or

(iv) on or after October 1, 2008, a flavored malt beverage; or

(c) an individual, partnership, corporation, or limited liability company who holds any interest in any retail license issued under this title that sells:

(i) spirituous liquor;

(ii) wine;

(iii) heavy beer; or

(iv) on or after October 1, 2008, a flavored malt beverage.

(7) If an individual, partnership, corporation, or limited liability company to whom a local industry representative license has been issued under this part no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

32A-8-504. COMMISSION AND DEPARTMENT DUTIES BEFORE GRANTING LICENSES, AND IN ISSUING LICENSES.

(1) Before a local industry representative license may be granted by the commission, the department shall conduct an investigation for the purpose of gathering information and making recommendations to the commission as to whether or not a license should be granted. This information shall be forwarded to the commission to aid in its determination.

(2) Before issuing a local industry representative license, the commission shall:

(a) determine that the applicant has complied with all basic qualifications and requirements for making application for a license as provided by Sections 32A-8-502 and 32A-8-503, and that the application is complete; and

(b) consider any other factors or circumstances it considers necessary.

(3) The commission shall furnish each licensee a license which must be displayed at the licensee's principal place of business.

32A-8-505. Operational restrictions.

(1) (a) A local industry representative licensee, employee or agent of the licensee, or employee or agent of a manufacturer, supplier, or importer who is conducting business in the state, shall abide by the conditions and requirements set forth in this section.

(b) If a person listed in Subsection (1)(a) knowingly violates or fails to comply with the conditions and requirements set forth in this section:

(i) the violation or failure to comply may result in:

(A) a suspension or revocation of the license; or

(B) other disciplinary action taken against individual employees or agents of the licensee; and

(ii) the commission may order the removal of the manufacturer's, supplier's, or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer:

- (A) directly committed the violation; or
 - (B) solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation.
- (2) A local industry representative licensee, employee or agent of the licensee, or employee or agent of a manufacturer, supplier, or importer who is conducting business in the state:
- (a) only to the extent authorized by Chapter 12, Criminal Offenses, may:
 - (i) assist the department in:
 - (A) ordering, shipping, and delivering merchandise;
 - (B) providing new product notification;
 - (C) obtaining listing and delisting information;
 - (D) receiving price quotations;
 - (E) providing product sales analysis;
 - (F) conducting shelf management; and
 - (G) conducting educational seminars; and
 - (ii) for the purpose of acquiring new listings:
 - (A) solicit orders from the department; and
 - (B) submit to the department price lists and samples of the products of the manufacturer, supplier, or importer;
 - (b) may not sell any liquor within the state except to the department and military installations including:
 - (i) wine;
 - (ii) heavy beer; or
 - (iii) on or after October 1, 2008, a flavored malt beverage;
 - (c) may not ship or transport, or cause to be shipped or transported, into this state or from one place to another within this state any liquor including:
 - (i) wine;
 - (ii) heavy beer; or
 - (iii) on or after October 1, 2008, a flavored malt beverage;
 - (d) may not sell or furnish any liquor to any person within this state other than to the department and military installations including:
 - (i) wine;
 - (ii) heavy beer; or
 - (iii) on or after October 1, 2008, a flavored malt beverage;
 - (e) except as otherwise provided, may not advertise products it represents in violation of this title or any other federal or state law;
 - (f) shall comply with all trade practices provided in Chapter 12, Criminal Offenses; and
 - (g) may only provide samples of products of the manufacturer, supplier, or importer for tasting and sampling purposes as provided in Section **32A-12-603** by the department.
- (3) (a) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of all manufacturers, suppliers, and importers the licensee represents.
- (b) The licensee shall notify the department in writing of any changes to the accounts listed within 14 days from the date the licensee either acquired or lost the account of a particular manufacturer, supplier, or importer.
- (4) A local industry representative licensee shall maintain accounting and other records and documents as the department may require for at least three years.
- (5) A local industry representative licensee or person acting for the licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission or the department, or any of their officials or employees, is subject to:
- (a) the immediate suspension or revocation of the industry representative's license; and
 - (b) possible criminal prosecution under Chapter 12, Criminal Offenses.
- (6) A local industry representative licensee may, for the purpose of becoming educated as to the quality and characteristics of a liquor, wine, or heavy beer product which the licensee represents, taste and analyze industry representative samples under the conditions listed in this Subsection (6).
- (a) The licensee may not receive more than two industry representative samples of a particular type,

vintage, and production lot of a particular branded product within a consecutive 120-day period.

(b) (i) A sample of liquor may not exceed 1 liter.

(ii) Notwithstanding Subsection (6)(b)(i), a sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:

(A) wine;

(B) heavy beer; or

(C) on or after October 1, 2008, a flavored malt beverage.

(c) An industry representative sample may only be of a product not presently listed on the department's sales list.

(d) (i) An industry representative sample shall be shipped:

(A) prepaid by the manufacturer, supplier, or importer;

(B) by common carrier and not via United States mail; and

(C) directly to the department's central administrative warehouse office.

(ii) An industry representative sample may not be shipped to any other location within the state.

(e) An industry representative sample shall be accompanied by a letter from the manufacturer, supplier, or importer:

(i) clearly identifying the product as an "industry representative sample"; and

(ii) clearly stating:

(A) the FOB case price of the product; and

(B) the name of the local industry representative for who it is intended.

(f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.

(g) The department shall affix to a bottle or container a label clearly identifying the product as an "industry representative sample."

(h) The department shall:

(i) account for and record each industry representative sample received;

(ii) account for the sample's disposition; and

(iii) maintain a record of the sample and its disposition for a two-year period.

(i) An industry representative sample may not leave the premises of the department's central administrative warehouse office.

(j) A licensed industry representative and the industry representative's employees and agents may, at regularly scheduled days and times established by the department, taste and analyze one or more industry representative samples on the premises of the department's central administrative warehouse office.

(k) Any unused contents of an opened product remaining after the product is sampled shall be destroyed by the department under controlled and audited conditions established by the department.

(l) An industry representative sample that is not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:

(i) contents destroyed under controlled and audited conditions established by the department; or

(ii) added to the inventory of the department for sale to the public.

(7) An employee or agent of a local industry representative licensee may not be:

(a) the holder of any retail license issued under this title that sells:

(i) spirituous liquor;

(ii) wine;

(iii) heavy beer; or

(iv) on or after October 1, 2008, a flavored malt beverage;

(b) an employee or agent of any retail licensee issued under this title that sells:

(i) spirituous liquor;

(ii) wine;

(iii) heavy beer; or

(iv) on or after October 1, 2008, a flavored malt beverage; or

(c) a minor.

(8) (a) A local representative licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to any other person, whether for monetary gain or not.

(b) A local industry representative license has no monetary value for the purpose of any type of disposition.

R81. Alcoholic Beverage Control, Administration.

R81-8. Manufacturers (Distillery, Winery, Brewery).

R81-8-1. Application.

An application for a manufacturer (distillery, winery, brewery) license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a manufacturer license when the requirements of Sections 32A-8-102, -103, and -105 have been met, and a completed application has been received by the department.

R81-8-2. Out of State Business.

(1) Purpose. Pursuant to 32A-8-101(4), brewers located outside the state must obtain a certificate of approval from the department before selling or delivering beer containing an alcohol content of less than 4% alcohol by volume to licensed beer wholesalers in this state, or if a small brewer, to licensed beer wholesalers or retailers in this state. These certificates must be renewed annually.

In addition to issuing certificates of approval to brewers who actually produce the beer, the department has also issued certificates to (1) importers that hold federal permits, and have the contractual rights to distribute and market beer for foreign breweries; and (2) marketing agents that distribute and market beer for domestic breweries. The department has also allowed brewers with a certificate of approval to market the products on behalf of other brewers under that certificate. However, this has resulted in a loss of direct regulatory authority over the breweries that actually produce the beer.

This rule ensures that each producer of beer obtain its own certificate of approval to allow its beer to be sold or delivered in this state.

(2) Application of Rule.

(a) A certificate of approval to sell or deliver beer in this state under 32A-8-101(4) may be issued only to the company that is ultimately responsible for producing the beer. The company holding the certificate may not allow another brewery to sell or deliver beer to this state under the certificate holder's certificate. A certificate of approval may not be issued to any third party such as an importer or marketing agent that does not actually manufacture or produce alcoholic beverages.

(b) This rule does not preclude the company that holds the certificate of approval from having its brand of beer produced by another brewery under contract under the brand name of the certificate holder's company. However, the certificate holder is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the certificate holder.

(c) A distillery or winery that has beer produced for it by a brewery under contract under the distillery's or winery's brand name is deemed to be a "brewery" for purposes of 32A-8-101(4), and may be issued a certificate of approval. However, the distillery or winery is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the distillery or winery that holds the certificate.

R81-8-3. Winery Tasting Facilities.

(1) Purpose. Pursuant to 32A-8-201(4), a licensed winery may allow the consumption of samples of wine on the premises of the winery as long as food is available. This rule establishes guidelines for tasting facilities on winery premises.

(2) Application of Rule. A winery licensee may operate on its manufacturing premises a tasting facility allowing the consumption of wine samples at a site approved by the department under the following conditions:

(a) The tasting area must be located on the winery premises.

(b) Food must be available in the tasting area.

(c) Records required by the department shall be kept current and available to the department for auditing purposes. This includes a daily record of all products and quantities tasted.

(d) The storage area floor plan for the tasting facility must be approved by the department and may not be relocated without department approval.

(e) Wine samples may not exceed two ounces per glass.

(f) Samples may not be removed from the winery premises.

(g) Sample tastings may not be conducted off of the winery premises.

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

Chapter 12 - Criminal Offenses

PART 1

GENERAL PROVISIONS

32A-12-101. UTAH CRIMINAL CODE APPLICABLE.

Title 76, Chapters 1, 2, 3, and 4, the Utah Criminal Code, relating to principles of construction, jurisdiction, venue, limitations of actions, multiple prosecutions, double jeopardy, burdens of proof, definitions, principles of criminal responsibility, punishments, and inchoate offenses apply to any criminal offense defined in this title, except as otherwise provided.

32A-12-102. SPECIAL BURDENS OF PROOF -- INFERENCES AND PRESUMPTIONS.

(1) In any prosecution of an offense defined in this title or in any proceeding brought to enforce this title:

(a) it is not necessary that the state or commission establish the precise description or quantity of the alcoholic beverages or products or the precise consideration, if any, given or received for the alcoholic beverages or products;

(b) there is an inference, absent proof to the contrary, that the alcoholic beverage or product in question is an alcoholic beverage or product if the witness describes it:

(i) as an alcoholic beverage or product;

(ii) by a name that is commonly applied to an alcoholic beverage or product; or

(iii) as intoxicating;

(c) if it is alleged that an association or corporation has violated this title, the fact of the incorporation of the association or corporation is presumed absent proof to the contrary;

(d) a certificate or report signed or purporting to be signed by any state chemist, assistant state chemist, or state crime laboratory chemist, as to the analysis or ingredients of any alcoholic beverage or product is:

(i) prima facie evidence:

(A) of the facts stated in that certificate or report; and

(B) of the authority of the person giving or making the report; and

(ii) admissible in evidence without any proof of appointment or signature absent proof to the contrary; and

(e) a copy of entries made in the records of the United States internal revenue collector, certified by the collector or a qualified notary public, showing the payment of the United States internal revenue special tax for the manufacture or sale of alcoholic beverages or products is prima facie evidence of the manufacture or sale by the party named in the entry within the period set forth in the record.

(2)(a) In proving the unlawful sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of alcoholic beverages or products, it is not necessary that the state or commission establish that any money or other consideration actually passed or that an alcoholic beverage or product was actually consumed if the court or trier of fact is satisfied that:

(i) a transaction in the nature of a sale, disposal, gift, or purchase actually occurred; or

(ii) any consumption of alcoholic beverages or products was about to occur.

(b) Proof of consumption or intended consumption of an alcoholic beverage or product on premises on which consumption is prohibited, by some person not authorized to consume alcoholic beverages or products on those premises, is evidence that an alcoholic beverage or product was sold or given to or purchased by the person consuming, about to consume, or carrying away the alcoholic beverage or product as against the occupant of the premises.

32A-12-103. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER.

In addition to Title 76, Chapter 2, Part 2, Criminal Responsibility for the Conduct of Another, the following principles apply to violations of this title:

(1) If a violation of this title is committed by any person in the employ of the occupant of any premises in which the offense is committed, or by any person who is required by the occupant to be or

remain in or upon the premises, or to act in any way for the occupant, the occupant is prima facie considered a party to the offense committed, and is liable as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant. Nothing in this section relieves the person actually committing the offense from liability.

(2) If a violation of this title is committed by a corporation, association, partnership, or limited liability company, the officer or agent of the corporation or association, partner, manager, or member of the limited liability company in charge of the premises in which the offense is committed is prima facie considered a party to the offense committed, and is personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section relieves the corporation, association, partnership, or limited liability company, or the person who actually committed the offense from liability.

32A-12-104. VIOLATION OF TITLE A MISDEMEANOR.

Any person who violates this title or the commission rules adopted under this title is guilty of a class B misdemeanor, unless otherwise provided in this title.

32A-12-105. ADDITIONAL CRIMINAL PENALTIES.

In addition to the penalties provided in Title 76, Chapter 3, Penalties:

(1) Upon any defendant's conviction of any offense defined in this title, the court may also order the defendant to make restitution or pay costs in accordance with Title 77, Chapter 32A, Defense Costs.

(2)(a) Upon a corporation's, association's, partnership's, or limited liability company's conviction of any offense defined in this title, and a failure of the corporation, partnership, association, or limited liability company to pay a fine imposed upon it, the powers, rights, and privileges of the corporation, association, partnership, or limited liability company, if it is a domestic corporation, association, partnership, or limited liability company may be suspended or revoked, and if a foreign corporation, association, partnership, or limited liability company, it forfeits its right to do intrastate business in this state.

(b) The department shall transmit the name of each corporation, association, partnership, or limited liability company to the Division of Corporations and Commercial Code, which shall immediately record the action in a manner that makes the information available to the public. The suspension, revocation, or forfeiture is effective from the time the record is made, and the certificate of the Division of Corporations and Commercial Code is prima facie evidence of the suspension, revocation, or forfeiture. Nothing contained in this section may be construed as affecting, limiting, or restricting any proceedings that otherwise may be taken for the imposition of any other punishment or the modes of enforcement or recovery of fines or penalties.

(3) Upon the conviction of any business entity required to have a business license to operate its business activities, or upon the conviction of any of its agents, employees, or officers of any offense defined in this title, with the knowledge, consent, or acquiescence of the business entity, the department shall forward a copy of the judgment of conviction to the appropriate governmental entity responsible for issuing and revoking the business licenses. That governmental entity may institute appropriate proceedings to revoke the business' license, and upon revocation, a license may not be granted to the business entity for at least one year from the date of revocation. Upon the conviction for a second or other offense, a license may not be granted for at least two years from the date of revocation.

(4) Upon conviction of any physician, pharmacist, druggist, dentist, or veterinarian of any offense defined in this title, the department shall forward a certified copy of the judgment of conviction to the Division of Occupational and Professional Licensing. That department may institute appropriate proceedings to revoke the defendant's license, and upon revocation, a license may not be granted to the defendant by the department for at least one year from the date of revocation. Upon the defendant's conviction for a second or other offense, a license may not be granted for at least two years from the date of revocation.

PART 2
SALES, PURCHASE, POSSESSION, AND CONSUMPTION

32A-12-201. UNLAWFUL SALE OR FURNISHING.

(1) It is unlawful for any person in the business of selling liquor, or any manufacturer, supplier, or importer of liquor, or their officers, managers, employees, or agents to sell, ship, transport, or cause to be sold, shipped, or transported any liquor from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:

- (a) the department;
- (b) a military installation;
- (c) a holder of a special use permit to the extent authorized by the commission in the permit; or
- (d) a bonded liquor warehouse licensed by the commission to distribute and transport liquor to:
 - (i) the department; or
 - (ii) an out-of-state wholesaler or retailer.

(2)(a) It is unlawful for any person in the business of selling beer, or any manufacturer, supplier, or importer of beer, or their officers, managers, employees, or agents to sell, ship, transport, or cause to be sold, shipped, or transported any beer from an out-of-state location directly or indirectly into this state except to the extent authorized by this title to:

- (i) a licensed beer wholesaler;
- (ii) a military installation; or
- (iii) a holder of a special use permit to the extent authorized by the commission in the permit.

(b) Subsection (2)(a) does not preclude a small brewer that holds a certificate of approval under Subsection 32A-8-101(4) from selling, shipping, or transporting beer directly to a licensed beer retailer to the extent authorized by Subsection 32A-8-401(5).

(3)(a) It is unlawful for any manufacturer, supplier, or importer of liquor in this state, or their officers, managers, employees, or agents to sell, ship, transport, or cause to be sold, shipped, or transported any liquor directly or indirectly to any person in this state except to the extent authorized by this title to:

- (i) the department;
- (ii) a military installation;
- (iii) a holder of a special use permit to the extent authorized by the commission in the permit; or
- (iv) a bonded liquor warehouse licensed by the commission to distribute and transport liquor to:
 - (A) the department; or
 - (B) an out-of-state wholesaler or retailer.

(b) Subsection (3)(a) does not preclude a winery licensed under this title and located in this state from selling wine to persons on its winery premises:

- (i) to the extent authorized by Subsection 32A-8-201(4)(c); or
- (ii) under a package agency established by the commission on the winery premises.

(4)(a) It is unlawful for any manufacturer, supplier, or importer of beer in this state, or their officers, managers, employees, or agents to sell, ship, transport, or cause to be sold, shipped, or transported any beer directly or indirectly to any person in this state except to the extent authorized by this title to:

- (i) a licensed beer wholesaler;
 - (ii) a military installation; or
 - (iii) a holder of a special use permit to the extent authorized by the commission in the permit.
- (b) Subsection (4)(a) does not preclude:

(i) a small brewer licensed under this title and located in this state from selling, shipping, and transporting beer directly to a licensed beer retailer in this state to the extent authorized by Subsection 32A-8-401(5); or

(ii) a brewer licensed under this title from selling beer to persons on its manufacturing premises under Subsection 32A-8-401(4)(c).

(5) It is unlawful for any person other than a person described in Subsection (1) or (2) to sell, ship, transport, or cause to be sold, shipped, or transported any alcoholic beverage or product from an out-of-state location directly or indirectly into this state, except as otherwise provided by this title.

(6) It is unlawful for any person in this state other than a person described in Subsection (3) or (4) to sell, ship, transport, or cause to be sold, shipped, or transported any alcoholic beverage or product directly or indirectly to any other person in this state, except as otherwise provided by this title.

(7) It is unlawful for any retail licensee or permittee in this state, or their officers, managers, employees, or agents to keep for sale, or to directly or indirectly, sell, offer to sell, or otherwise furnish to another, any alcoholic beverage or product, except as otherwise provided by this title.

(8)(a) A violation of Subsection (1), (2), (3), or (4) is a third degree felony.

(b) A violation of Subsection (5) or (6) is a class B misdemeanor.

(c) A violation of Subsection (7) is a class B misdemeanor, except where otherwise provided by this title.

32A-12-202. UNAUTHORIZED SALE OR SUPPLY.

A person authorized by this title to sell any alcoholic beverage or product, and an officer, manager, employee, or agent of that person may not sell, offer to sell, or otherwise furnish or supply, any alcoholic beverage or product in any place, or at any day or time other than as authorized by this title or the rules of the commission.

32A-12-203. UNLAWFUL SALE OR FURNISHING TO MINORS.

(1) A person may not sell, offer to sell, or otherwise furnish any alcoholic beverage or product to any minor.

(2)(a) Except as otherwise provided in Subsection (4), a person is guilty of a class B misdemeanor if that person:

(i) sells, offers to sell, or otherwise furnishes any alcoholic beverage or product to any minor; and

(ii) negligently or recklessly fails to determine whether the recipient of the alcoholic beverage or product is a minor.

(b) As used in this Subsection (2), "negligently" means with simple negligence.

(3) Except as otherwise provided in Subsection (4), a person who sells, offers to sell, or otherwise furnishes any alcoholic beverage or product to any minor knowing that the recipient of the alcoholic beverage or product is a minor is guilty of a class A misdemeanor.

(4) This section does not apply to the furnishing of an alcoholic beverage or product to a minor in accordance with this title:

(a) for medicinal purposes by:

(i) the parent or guardian of the minor; or

(ii) the minor's physician or dentist; or

(b) as part of a church's or religious organization's religious services.

32A-12-204. UNLAWFUL SALE OR FURNISHING TO INTOXICATED PERSONS.

(1) A person may not sell, offer to sell, or otherwise furnish any alcoholic beverage or product to:

(a) any person who is actually or apparently intoxicated; or

(b) a person whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was actually or apparently intoxicated.

(2)(a) A person who negligently or recklessly violates Subsection (1) is guilty of a class B misdemeanor.

(b) A person who knowingly violates Subsection (1) is guilty of a class A misdemeanor.

(3) As used in Subsection (2)(a), "negligently" means with simple negligence.

32A-12-205. UNLAWFUL SALE OR SUPPLY TO INTERDICTED PERSONS.

(1) A person may not sell, offer to sell, or otherwise furnish or supply any alcoholic beverage or product to any known interdicted person.

(2) This section does not apply to the furnishing or supplying of an alcoholic beverage or product to an interdicted person upon the prescription of a physician, or administered by a physician, dentist, or hospital under this title.

32A-12-206. UNLAWFUL SALE OR SUPPLY OF BEER.

(1) A person may not sell, offer to sell, or otherwise furnish or supply beer to the general public in containers larger than two liters. This does not preclude licensed beer wholesalers from selling, offering

to sell, or otherwise furnishing or supplying beer in containers larger than two liters to beer retailers authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises.

(2) A person may not purchase or possess beer in containers larger than two liters unless the person is a beer retailer authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises.

32A-12-207. UNLAWFUL SALE OR FURNISHING DURING EMERGENCY.

During a period of emergency proclaimed by the governor to exist in an area of the state, it is unlawful for a person to sell, offer to sell, or otherwise furnish any alcoholic product in that area if the director of the department has publicly announced and directed that alcoholic products may not be sold, offered for sale, or otherwise furnished in that area during the period of emergency.

32A-12-208. UNLAWFUL PURCHASE OR ACCEPTANCE.

It is unlawful for any person, or the person's officer, manager, employee, or agent, directly or indirectly or upon any pretense or device, to purchase, take, or accept any alcoholic beverage or product from any other person, except as provided by this title or the rules of the commission adopted under this title.

32A-12-209. Unlawful purchase, possession, consumption by minors -- Measurable amounts in body.

(1) Unless specifically authorized by this title, it is unlawful for any minor to:

- (a) purchase any alcoholic beverage or product;
- (b) attempt to purchase any alcoholic beverage or product;
- (c) solicit another person to purchase any alcoholic beverage or product;
- (d) possess any alcoholic beverage or product;
- (e) consume any alcoholic beverage or product; or
- (f) have measurable blood, breath, or urine alcohol concentration in the minor's body.

(2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic beverage or product for a minor for:

- (a) any minor to misrepresent the minor's age; or
- (b) any other person to misrepresent the age of a minor.

(3) It is unlawful for a minor to possess or consume any alcoholic beverage while riding in a limousine or chartered bus.

(4) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section:

- (a) if the violation is the minor's first violation of this section, the court may suspend the minor's driving privileges; or
- (b) if the violation is the minor's second or subsequent violation of this section, the court shall suspend the minor's driving privileges.

(5) When a minor who is at least 13 years old, but younger than 18 years old, is found by the court to have violated this section, the provisions regarding suspension of the driver's license under **Section 78A-6-606** apply to the violation.

(6) When the court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under **Section 53-3-219**.

(7) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the department shall extend the suspension for an additional like period of time.

(8) This section does not apply to a minor's consumption of an alcoholic beverage or product in accordance with this title:

- (a) for medicinal purposes if the alcoholic beverage or product is furnished by:
 - (i) the parent or guardian of the minor; or
 - (ii) the minor's physician or dentist; or
- (b) as part of a church's or religious organization's religious services.

32A-12-209.5. Unlawful admittance or attempt to gain admittance by minor.

(1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the premises of:

(a) a tavern; or

(b) a class D private club, except to the extent authorized by Subsection **32A-5-107(8)**.

(2) A minor who violates this section is guilty of a class C misdemeanor.

(3) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section:

(a) if the violation is the minor's first violation of this section, the court may suspend the minor's driving privileges; or

(b) if the violation is the minor's second or subsequent violation of this section, the court shall suspend the minor's driving privileges.

(4) When a minor who is at least 13 years old, but younger than 18 years old, is found by a court to have violated this section, the provisions regarding suspension of the driver's license under Section **78A-6-606** apply to the violation.

(5) When the court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section **53-3-219**.

(6) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the department shall extend the suspension for an additional like period of time.

32A-12-210. UNLAWFUL PURCHASE BY INTOXICATED PERSONS.

A person may not purchase any alcoholic beverage or product when the person is intoxicated.

32A-12-211. UNLAWFUL PURCHASE BY INTERDICTED PERSONS.

A person may not purchase or possess any alcoholic beverage or product if he is an interdicted person, except as prescribed or administered by a physician, dentist, or hospital under this title.

32A-12-212. Unlawful possession -- Exceptions.

(1) A person may not have or possess within this state any liquor unless authorized by this title or the rules of the commission, except that:

(a) a person who clears United States Customs when entering this country may have or possess for personal consumption and not for sale or resale, a maximum of two liters of liquor purchased from without the United States;

(b) a person who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move, if:

(i) the person first obtains department approval before moving the liquor into the state;

(ii) the department affixes the official state label to the liquor; and

(iii) the person pays the department a reasonable administrative handling fee as determined by the commission;

(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if:

(i) the person first obtains department approval before moving the liquor into the state;

(ii) the person provides sufficient documentation to the department to establish the person's legal right to the liquor as a beneficiary;

(iii) the department affixes the official state label to the liquor; and

(iv) the person pays the department a reasonable administrative handling fee as determined by the commission; or

(d) a person may transport, have, or possess liquor if:

(i) the person transports, has, or possesses the liquor:

(A) for personal household use and consumption; and

(B) not for:

(I) sale;

(II) resale;

(III) gifting to another; or

(IV) consumption on a premise licensed by the commission;

(ii) the liquor is purchased from a store or outlet on a military installation; and

(iii) the maximum amount the person transports, has, or possesses under this Subsection (1)(d) is:

(A) two liters of:
(I) spirituous liquor;
(II) wine; or
(III) a combination of spirituous liquor and wine; and
(B) (I) one case of heavy beer that does not exceed 288 ounces; or
(II) on or after October 1, 2008, one case of a flavored malt beverage that does not exceed 288 ounces.

- (2) (a) Approval under Subsection (1)(b) may be obtained by a person who:
(i) is transferring the person's permanent residence to this state; or
(ii) maintains separate residences both in and out of this state.
(b) A person may not obtain approval to transfer liquor under Subsection (1)(b) more than once.

32A-12-213. UNLAWFUL BRINGING ONTO PREMISES FOR CONSUMPTION.

(1) Except as provided in Subsection (3), a person may not bring for on-premise consumption any alcoholic beverage onto the premises of any:

- (a) licensed or unlicensed restaurant;
(b) licensed or unlicensed private club;
(c) airport lounge licensee;
(d) on-premise banquet licensee;
(e) on-premise beer retailer licensee;
(f) event where alcoholic beverages are sold or served under a single event permit or temporary special event beer permit issued under this title; or
(g) any establishment open to the general public.

(2) Except as provided in Subsection (3), a licensed or unlicensed restaurant or private club, airport lounge licensee, on-premise banquet licensee, on-premise beer retailer licensee, or holder of a single event permit or temporary special event beer permit issued under this title, or its officers, managers, employees, or agents may not allow a person to bring onto its premises any alcoholic beverage for on-premise consumption or allow consumption of any such alcoholic beverage in violation of this section.

(3)(a) A person may bring bottled wine onto the premises of any restaurant liquor licensee, limited restaurant licensee, or private club licensee and consume the wine pursuant to the applicable restrictions contained in Subsection 32A-4-106(14), 32A-4-307(14), or 32A-5-107(31);

(b) a passenger of a limousine may bring onto, have, and consume any alcoholic beverage on the limousine if:

- (i) the travel of the limousine begins and ends at:
(A) the residence of the passenger;
(B) the hotel of the passenger, if the passenger is a registered guest of the hotel; or
(C) the temporary domicile of the passenger; and
(ii) the driver of the limousine is separated from the passengers by partition or other means approved by the department;
(c) a passenger of a chartered bus may bring onto, have, and consume any alcoholic beverage on the chartered bus:
(i)(A) but may consume only during travel to a specified destination of the chartered bus and not during travel back to the place where the travel begins; or
(B) if the travel of the chartered bus begins and ends at:
(I) the residence of the passenger;
(II) the hotel of the passenger, if the passenger is a registered guest of the hotel; or
(III) the temporary domicile of the passenger; and
(ii) the chartered bus has a non-drinking designee other than the driver traveling on the chartered bus to monitor consumption; and
(d) a person may bring onto any premises, have, and consume any alcoholic beverage at a privately hosted event that is not open to the general public.

(4) Except as provided in Subsection (3)(c)(i)(A), the consumption of alcoholic beverages in limousines and chartered buses is not allowed if the limousine or chartered bus drops off passengers at locations from which they depart in private vehicles.

32A-12-214. UNLAWFUL POSSESSION BY LICENSEES OR PERMITTEES.

A licensee or permittee of the commission may not have, possess, store, or allow consumption on its premises any liquor not purchased from the department, a state store, or a package agency, except as authorized by Section 32A-12-213, other provisions of this title, or the rules of the commission.

32A-12-215. UNLAWFUL STORAGE.

It is unlawful for any person to store liquor in any establishment that is authorized to sell beer for on-premise consumption but is not licensed by the commission to sell liquor.

32A-12-216. UNLAWFUL PERMITTING OF INTOXICATION.

(1) A person may not permit any other person to become intoxicated or any intoxicated person to consume any alcoholic beverage in:

- (a) any premises of which the person is the owner, tenant, or occupant; or
- (b) in any chartered bus or limousine of which the person is the owner or operator.

(2) A violation of Subsection (1) is a class C misdemeanor.

32A-12-217. UNLAWFUL PERMITTING OF CONSUMPTION BY MINORS.

(1) A person may not permit any minor to consume any alcoholic beverage in any chartered bus or limousine of which the person is the owner or operator.

(2) A violation of Subsection (1) is an infraction.

32A-12-218. UNLAWFUL LABELING OR LACK OF LABEL.

(1) Unless otherwise provided by this title or the rules of the commission, it is unlawful for any person to possess any liquor unless:

- (a) the liquor is contained in its original package; and
- (b) the package has affixed to it the official commission label and markings as required by this title and the rules of the commission.

(2) Unless authorized by the department, it is unlawful for any person to be in possession of or use an official commission label, marking, or equipment that is used by the department, a state store, or a package agency to label or mark original liquor bottles or packages.

(3) A violation of Subsection (2) is a third degree felony.

32A-12-219. UNLAWFUL ADULTERATION.

A person may not, for any purpose, mix or allow to be mixed any drug, methylic alcohol, any crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid with an alcoholic beverage sold or supplied by the person as a beverage.

32A-12-220. UNLAWFUL CONSUMPTION IN PUBLIC PLACES.

(1) A person may not consume liquor in a public building, park, or stadium, except as provided by this title.

(2) A violation of this section is a class C misdemeanor.

32A-12-221. LAWFUL DETENTION.

(1)(a) For the purpose of informing a peace officer of a suspected violation and subject to the requirements of Subsection (1)(c), a person described in Subsection (1)(b) may:

- (i) detain a person; and
 - (ii) hold any form of identification presented by the person.
- (b) The following may take an action described in Subsection (1)(a):
- (i) a state store employee;
 - (ii) a package agent;
 - (iii) a licensee or permittee under this title;
 - (iv) a beer retailer; or
 - (v) an employee of a person described in Subsections (1)(b)(i) through (iv).

(c) A person described in Subsection (1)(b) may take an action described in Subsection (1)(a) only:

- (i) if that person has reason to believe that the person against whom the action is taken is:

- (A) in a facility where liquor or beer is sold; and
- (B) in violation of Section 32A-12-209, 32A-12-210, or 32A-12-211; and
- (ii)(A) in a reasonable manner; and
- (B) for a reasonable length of time.
- (2) Unless the detention is unreasonable under all circumstances, the detention or failure to detain does not create criminal or civil liability for:
 - (a) false arrest;
 - (b) false imprisonment;
 - (c) slander; or
 - (d) unlawful detention.

32A-12-222. UNLAWFUL DISPENSING.

- (1) For purposes of this section:
 - (a) "PRIMARY SPIRITUOUS LIQUOR" means the main distilled spirit in a beverage; and
 - (b) "PRIMARY SPIRITUOUS LIQUOR" does not include any secondary alcoholic product used as flavorings in conjunction with the primary distilled spirit in the beverage.
- (2) A licensee licensed under this title to sell, serve, or otherwise furnish spirituous liquor for consumption on the licensed premises, or any officer, manager, employee, or agent of the licensee may not:
 - (a) sell, serve, dispense, or otherwise furnish any primary spirituous liquor to any person on the licensed premises except in a quantity that does not exceed one ounce per beverage dispensed through a calibrated metered dispensing system approved by the department;
 - (b) sell, serve, dispense, or otherwise furnish more than a total of 2.75 ounces of spirituous liquor per beverage;
 - (c) allow any person on the licensed premises to have more than two alcoholic beverages containing spirituous liquor at a time; or
 - (d) allow any person on the licensed premises to have more than a total of 2.75 ounces of spirituous liquor at a time.
- (3) Any of the following or an officer, manager, employee, or agent of the following may not allow any person on the premises of the following to have more than one spirituous liquor beverage at a time:
 - (a) a restaurant liquor licensee;
 - (b) limited restaurant licensee;
 - (c) an on-premise banquet licensee; or
 - (d) a single event permittee.
- (4) A violation of this section is a class C misdemeanor.

**PART 3
OPERATIONS**

32A-12-301. OPERATING WITHOUT A LICENSE OR PERMIT.

- (1) Except as provided by this title or the rules of the commission, a person may not operate the following if that establishment allows patrons, customers, members, guests, visitors, or other persons to purchase or consume alcoholic beverages on the premises:
 - (a) a restaurant;
 - (b) an airport lounge;
 - (c) a private club;
 - (d) an on-premise beer retailer outlet;
 - (e) on-premise banquet premises; or
 - (f) an establishment similar to one listed in Subsections (1)(a) through (e).
- (2) A person conducting an event or function that is open to the general public may not directly or indirectly sell, offer to sell, or otherwise furnish alcoholic beverages to persons attending the event or function without first obtaining a permit under this title.
- (3) A person conducting a privately hosted event or private social function may not directly or indirectly sell or offer to sell alcoholic beverages to persons attending the privately hosted event or private social function without first obtaining a permit under this title.

32A-12-302. STORING OR POSSESSING PURSUANT TO FEDERAL STAMP.

(1) It is unlawful for any person, not acting for or licensed by the commission, who holds a stamp issued by the Bureau of Internal Revenue of the United States as a retail dealer in fermented malt liquor, or the person's operators or employees, to have, hold, store, or possess liquor in or on premises described in the stamp while the stamp remains in effect, except as otherwise provided by statute.

(2) Nothing in this section may be construed to prevent persons other than the owner or operator, or employees of either, from possessing and consuming, but not storing, liquor on premises described by the fermented malt liquor stamp.

32A-12-303. TAMPERING WITH RECORDS.

(1) Any official or employee of the commission or the department who has custody of any writing or record required to be filed or deposited with the commission or the department under this title, and who steals, falsifies, alters, willfully destroys, mutilates, defaces, removes, or conceals in whole or in part that writing or record, or who knowingly permits any other person to do so, is guilty of a third degree felony.

(2) Any person not an official or employee of the commission or the department who commits any of the acts specified in Subsection (1) is guilty of a class B misdemeanor.

32A-12-304. MAKING FALSE STATEMENTS.

(1)(a) Any person who makes any false material statement under oath or affirmation in any official proceeding before the commission or the department is guilty of a second degree felony.

(b) As used in Subsection (1)(a), "material" statement is as defined in Section 76-8-501.

(2) A person is guilty of a class B misdemeanor if that person knowingly:

(a) makes a false statement under oath or affirmation in any official proceeding before the commission or the department;

(b) makes a false statement with a purpose to mislead a public servant in performing that servant's official functions under this title;

(c) makes a false statement and the statement is required by this title to be sworn or affirmed before a notary or other person authorized to administer oaths;

(d) makes a false written statement on or pursuant to any application, form, affidavit, or document required by this title;

(e) creates a false impression in a written application, form, affidavit, or document required by this title by omitting information necessary to prevent statements in them from being misleading;

(f) makes a false written statement with intent to deceive a public servant in the performance of that servant's official functions under this title; or

(g) submits or invites reliance on any writing or document required under this title which he knows to be lacking in authenticity.

(3) A person is not guilty under Subsection (2) if that person retracts the falsification before it becomes apparent that the falsification was or would be exposed.

32A-12-305. OBSTRUCTING AN OFFICER MAKING A SEARCH OR AN OFFICIAL PROCEEDING OR INVESTIGATION.

(1) A person in or having charge of any premises may not refuse or fail to admit to the premises or obstruct the entry of any member of the commission, authorized representative of the commission or department, or any law enforcement officer who demands entry when acting under this title.

(2) A person in or having charge of any premises may not interfere with any of the following who is conducting an investigation under this title at the premises:

(a) a member of the commission;

(b) an authorized representative of the commission or department; or

(c) any law enforcement officer.

(3) A person is guilty of a second degree felony if, believing that an official proceeding or investigation is pending or about to be instituted under this title, that person:

(a) alters, destroys, conceals, or removes any writing or record with a purpose to impair its verity or availability in the proceeding or investigation; or

(b) makes, presents, or uses anything that the person knows to be false with a purpose to deceive any commissioner, department official or employee, law enforcement official, or other person who may be engaged in a proceeding or investigation under this title.

32A-12-306. CONFLICTING INTERESTS.

(1) A member of the commission, the department director, or any employee of the department may not be directly or indirectly interested or engaged in any other business or undertaking dealing in alcoholic products, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for the member's own benefit or in a fiduciary capacity for some other person or entity.

(2) A member of the commission, the department director, or any employee of the department may not enter into or participate in any business transaction as a partner, co-owner, joint venturer, or shareholder with any agent, representative, employee, or officer of any supplier of alcoholic products to the department.

(3) The following are governed by Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act:

- (a) a member of the commission;
- (b) the department director; or
- (c) any employee of the department.

(4) This section does not prevent the purchase of alcoholic products by any commission member, the department director, or any employee of the department as authorized by this title.

32A-12-307. Interfering with suppliers.

(1) Except as provided in Subsection (2), a member of the commission, the director, or an employee of the department may not directly or indirectly participate in any manner, by recommendation or otherwise, in the appointment, employment, or termination of appointment or employment of an agent, representative, employee, or officer of a manufacturer, supplier, or importer of liquor to the department including a manufacturer, supplier, or importer of:

- (a) wine;
- (b) heavy beer; or
- (c) on or after October 1, 2008, a flavored malt beverage.

(2) A person described in Subsection (1) may participate in the appointment, employment, or termination of appointment or employment to determine qualifications for licensing under Chapter 8, Part 5, Local Industry Representative Licenses, and to enforce compliance with this title.

32A-12-308. OFFERING OR SOLICITING BRIBES OR GIFTS.

(1) A person having sold, selling, or offering any alcoholic product for sale to the commission or department may not offer, make, tender, or in any way deliver or transfer any bribe, gift as defined in Section 67-16-5, or share of profits to:

- (a) any commissioner;
- (b) the department director;
- (c) any department employee; or
- (d) any law enforcement officer responsible for the enforcement of this title.

(2) A commissioner, the department director, any department employee, or any law enforcement officer responsible for the enforcement of this title may not knowingly solicit, receive, accept, take, or seek, directly or indirectly, any commission, compensation as defined in Section 67-16-3, gift as defined in Section 67-16-5, or loan whatsoever from any person, association, or corporation having sold, selling, or offering any alcoholic product for sale.

(3) A violation of this section is punishable under the provisions of Section 67-16-12.

32A-12-309. ORGANIZING FOR PECUNIARY PROFIT. *[Repealed 2003]*

32A-12-310. FORGERY.

(1)(a) Any person, with a purpose to defraud the commission or the department or with knowledge that he is facilitating a fraud to be perpetrated by anyone, who forges any writing required under this title, is guilty of forgery as provided under Section 76-6-501.

- (b) A violation of Subsection (1)(a) is a second degree felony.
- (2) Any person, with intent to defraud the commission or the department, who knowingly possesses any writing that is a forgery as defined in Section 76-6-501, is guilty of a third degree felony.

PART 4

ADVERTISING AND SOLICITING

32A-12-401. ADVERTISING PROHIBITED -- EXCEPTIONS.

- (1)(a) The advertising of liquor by the department is prohibited, except:
 - (i) the department may provide for an appropriate sign in the window or on the front of a state store or package agency denoting that it is a state authorized liquor outlet;
 - (ii) the department or a package agency may provide printed price lists to the public;
 - (iii) the department may authorize the use of price posting and floor stacking of liquor within state stores;
 - (iv) subject to Subsection (1)(b), the department may provide a listing of the address and telephone number of a state store in one or more printed or electronic directories available to the general public; and
 - (v) subject to Subsection (1)(b), a package agency may provide a listing of its address and telephone number in one or more printed or electronic directories available to the general public.
- (b) Any listing under Subsection (1)(a)(iv) or (v) in the business or yellow pages of a telephone directory may not be displayed in an advertisement or other promotional format.
- (2)(a) The department may not advertise alcoholic beverages on billboards.
- (b) A package agency may not advertise alcoholic beverages on billboards except to the extent allowed by the commission by rule.
- (3)(a) The department may not display liquor or price lists in windows or showcases visible to passersby.
- (b) A package agency may not display liquor or price lists in windows or showcases visible to passersby except to the extent allowed by the commission by rule.
- (4) Except to the extent prohibited by this title, the advertising of alcoholic beverages is allowed under guidelines established by the commission by rule.
- (5) The advertising or use of any means or media to offer alcoholic beverages to the general public without charge is prohibited.

PART 5

TRANSPORTATION AND DISTRIBUTION

32A-12-501. DISPOSITION OF LIQUOR ITEMS SHIPPED TO THE DEPARTMENT.

- (1) Any liquor item received by the department from a supplier as a sample or as an item not specifically listed on a department purchase order shall be handled in accordance with and subject to Subsection 32A-12-603(4)(c)(ix).
- (2) Funds of the department may not be used to pay freight or charges on a sample or any liquor item:
 - (a) shipped to the department by suppliers; and
 - (b) not listed on a department purchase order.

32A-12-502. UNLAWFUL REMOVAL FROM CONVEYANCE OR DIVERSION OF SHIPMENTS.

- (1) It is unlawful for any motor carrier or other person transporting any alcoholic product in interstate or other commerce intended for, or consigned to, or claimed to be intended for or consigned to any person without this state, to remove or to permit any person to remove the alcoholic product or any part of the alcoholic product from the conveyance in which it is carried while within this state.
- (2) Removal from the conveyance may be allowed if a motor carrier or other person notifies the department in writing at least 24 hours before the intended removal and complies with the instructions given by the department. The department shall, upon receiving this notice or a notice under Subsection (4), take precautions as necessary to ensure compliance with the laws of this state relating to alcoholic products.

(3) It is unlawful for any person to receive for storage or other purpose, or to possess any alcoholic product that has been removed from a car or other conveyance in violation of this section.

(4) It is unlawful for any motor carrier, or any other person, to divert to any place within this state, or to deliver to any person in this state, any alcoholic product that has been consigned for shipment to any place without this state, unless the carrier or other person first notifies the department in writing at least 24 hours before the intended diversion or delivery, and complies with the instructions given by the department.

32A-12-503. UNLAWFUL IMPORTATIONS. [Repealed 2003]

32A-12-504. UNLAWFUL TRANSPORTATION.

It is unlawful for any person, including a motor carrier, or any officer, agent, or employee of a motor carrier, to order or purchase any alcoholic product or to cause any alcoholic product to be shipped, carried, or transported into this state, or from one place to another within this state except as otherwise authorized by this title.

32A-12-505. LAWFUL TRANSPORTATION.

Nothing contained in Sections 32A-12-503 and 32A-12-504 prohibits any carrier from:

- (1) transporting alcoholic products in the course of export from the state; or
- (2) transporting alcoholic products across any part of this state while in transit pursuant to a bona fide consignment of the alcoholic products to a person outside of this state.

32A-12-506. CARRIERS' RECORDS.

(1) All motor carriers and other persons transporting alcoholic products into or within this state shall keep books in which is entered, immediately on the receipt of any products, the name of every person to whom the products are consigned, the amount and kind received, and the date when delivered. The consignee shall sign the consignee's name, or in the case of a partnership or corporation, an agent authorized in writing, shall sign their name in the books.

(2) The books shall be open to inspection by any authorized official of the state or local authority at any time during business hours of the motor carrier. The books constitute prima facie evidence of the facts stated in the books and are admissible as evidence in any court proceeding to enforce this title.

PART 6 TRADE PRACTICES

32A-12-601. DEFINITIONS.

As used in this part:

(1)(a) For purposes of Section 32A-12-602, "EXCLUSION" is as defined in 27 C.F.R. Sections 8.51 through 8.54.

(b) For purposes of Section 32A-12-603, "EXCLUSION" is as defined in 27 C.F.R. Sections 6.151 through 6.153.

(2)(a) "INDUSTRY MEMBER" means:

- (i) an alcoholic beverage manufacturer;
- (ii) a producer;
- (iii) a supplier;
- (iv) an importer;
- (v) a wholesaler;
- (vi) a bottler;
- (vii) a warehouser and bottler; or

(viii) for a person described in Subsections (2)(a)(i) through (vii), any of its:

- (A) affiliates;
- (B) subsidiaries;
- (C) officers;
- (D) directors;
- (E) partners;

- (F) agents;
- (G) employees; or
- (H) representatives.
- (b) "INDUSTRY MEMBER" does not include:

- (i) the commission;
- (ii) the department; or
- (iii) any of the commission's or department's officers or employees.

(3) "RETAILER" means:

- (a) the holder of an alcoholic beverage license or permit issued by the commission or by local authority to allow the holder to engage in the sale of alcoholic beverages to consumers whether for consumption on or off the premises; or
- (b) any of the holder's, agents, officers, directors, shareholders, partners, or employees.

32A-12-602. EXCLUSIVE OUTLETS.

(1) It is unlawful for any industry member, directly or indirectly or through an affiliate, to require, by agreement or otherwise, that the department or a retailer purchase any alcoholic beverage products from the industry member or the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons.

(2)(a) Subsection (1) applies only to a transaction between:

- (i) one or more industry members; and
- (ii)(A) the department; or
- (B) one or more retailers.

(b) Subsection (1) does not apply to a transaction between two or more industry members including between a manufacturer and a wholesaler.

(3) Subsection (1) includes purchases coerced by industry members through acts or threats of physical or economic harm, as well as voluntary industry member-retailer purchase agreements.

(4)(a) Subsection (1) includes any contract or agreement, written or unwritten, that has the effect of requiring the department or retailer to purchase alcoholic beverages from the industry member beyond a single sales transaction.

(b) Examples of a contract described in Subsection (4)(a) include:

(i) an advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's products; or

(ii) a sales contract awarded on a competitive bid basis that has the effect of prohibiting the department or retailer from purchasing from other industry members by:

(A) requiring that the retailer purchase a product or line of products exclusively from the industry member for the period of the agreement; or

(B) requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.

(5)(a) Subsection (1) includes any contract, agreement, or other arrangement between an industry member and a third party nonretailer that requires the department or a retailer to purchase the industry member's products to the exclusion in whole or in part of any alcoholic beverage products sold or offered for sale by other persons.

(b) This Subsection (5) applies whether the contract, agreement, or other arrangement originates with the industry member or the third party.

(c) Examples of a contract, agreement, or other arrangement described in this Subsection (5) include:

(i) a contract, agreement, or arrangement:

(A) with a third party such as a ball club or municipal or private corporation that is not a retailer;

(B) under which the third party leases the concession rights and is able to control the purchasing decisions of a retailer; and

(C) that requires the retailer to purchase the industry member's products to the exclusion in whole or in part of any alcoholic beverage products sold or offered for sale by other persons; or

(ii) a contract, agreement, or arrangement with a third party nonretailer that in return requires a retailer to purchase the industry member's products to the exclusion in whole or in part of any alcoholic beverage products sold or offered for sale by other persons in return for which the third party provides a service or other thing of value such as:

- (A) sponsoring radio or television broadcasting;
- (B) paying for advertising; or
- (C) providing other services or things of value.

32A-12-603. Tied house -- Prohibitions.

(1) (a) It is unlawful for an industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by acquiring or holding any interest in any license with respect to the premises of a retailer, except where the license is held by a retailer that is completely owned by the industry member.

(b) Interest in any retail license includes any interest acquired by a corporate official, partner, employee, or other representative of the industry member.

(c) Any interest in a retail license acquired by a separate corporation in which the industry member or the industry member's officials hold ownership or are otherwise affiliated is an interest in a retail license.

(d) Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of Subsection (1)(a).

(2) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of the retailer's business.

(b) For purposes of Subsection (2)(a):

(i) "interest" does not include complete ownership of a retail business by an industry member;

(ii) interest in retail property includes any interest acquired by a corporate official, partner, employee, or other representative of the industry member;

(iii) any interest in a retail license acquired by a separate corporation in which the industry member or its officials hold ownership or are otherwise affiliated is an interest in the retailer's property;

(iv) less than complete ownership of a retail business by an industry member constitutes an interest in retail property;

(v) the acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property; and

(vi) the renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property.

(3) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing, giving, renting, lending, or selling to the retailer any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to the exceptions enumerated in Subsection (4).

(b) (i) For purposes of this Subsection (3), indirect inducement includes:

(A) furnishing things of value to a third party where the benefits resulting from the things of value flow to individual retailers; and

(B) making payments for advertising to a retailer association or a display company where the resulting benefits flow to individual retailers.

(ii) Notwithstanding Subsection (3)(b)(i), an indirect inducement does not arise if:

(A) the thing of value was furnished to a retailer by the third party without the knowledge or intent of the industry member; or

(B) the industry member did not reasonably foresee that the thing of value would have been furnished to a retailer.

(iii) Anything that may lawfully be furnished, given, rented, lent, or sold by industry members to retailers under Subsection (4) may be furnished directly by a third party to a retailer.

(c) (i) A transaction in which equipment is sold to a retailer by an industry member, except as provided in Subsection (4), is the selling of equipment within the meaning of Subsection (3)(a) regardless of how the equipment is sold.

(ii) The negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of Subsection (3)(a).

(d) The furnishing of free warehousing by delaying delivery of alcoholic beverages beyond the time

that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(e) Any financial, legal, administrative, or influential assistance given a retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of Subsection (3)(a).

(4) (a) Notwithstanding Subsection (3), things of value may be furnished by industry members to retailers under the conditions and within the limitations prescribed in:

(i) this Subsection (4); and

(ii) the applicable federal laws cited in this Subsection (4).

(b) (i) The following may be furnished by an industry member:

(A) a product display as provided in 27 C.F.R. Sec. 6.83;

(B) point of sale advertising materials and consumer advertising specialties as provided in 27 C.F.R. Sec. 6.84;

(C) things of value to a temporary retailer to the extent allowed in 27 C.F.R. Sec. 6.85;

(D) equipment and supplies as provided in 27 C.F.R. Sec. 6.88;

(E) combination packaging as provided in 27 C.F.R. Sec. 6.93;

(F) educational seminars as provided in 27 C.F.R. Sec. 6.94;

(G) consumer promotions as provided in 27 C.F.R. Sec. 6.96;

(H) advertising service as provided in 27 C.F.R. Sec. 6.98;

(I) stocking, rotation, and pricing service as provided in 27 C.F.R. Sec. 6.99;

(J) merchandise as provided in 27 C.F.R. Sec. 6.101; and

(K) outside signs as provided in 27 C.F.R. Sec. 6.102.

(ii) The following exceptions provided in federal law are not adopted:

(A) the exception for samples provided in 27 C.F.R. Sec. 6.91;

(B) the exception for consumer tasting or sampling at retail establishments provided in 27 C.F.R. Sec. 6.95; and

(C) the exception for participation in retailer association activities provided in 27 C.F.R. Sec. 6.100.

(iii) To the extent required by 27 C.F.R. Sec. 6.81(b) an industry member shall keep and maintain a record:

(A) of all items furnished to a retailer;

(B) on premises of the industry member; and

(C) for a three-year period.

(c) A sample of liquor may be provided to the department under the following conditions:

(i) This Subsection (4)(c) includes a sample of:

(A) wine;

(B) heavy beer; or

(C) on or after October 1, 2008, a flavored malt beverage.

(ii) With the department's permission, an industry member may submit department samples to the department for product testing, analysis, and sampling.

(iii) No more than two department samples of a particular type, vintage, and production lot of a particular branded product may be submitted to the department for department testing, analysis, and sampling within a consecutive 120-day period.

(iv) (A) A sample of liquor may not exceed 1 liter.

(B) Notwithstanding Subsection (4)(c)(iv)(A), a sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:

(I) wine;

(II) heavy beer; or

(III) on or after October 1, 2008, a flavored malt beverage.

(v) (A) A department sample submitted to the department:

(I) shall be shipped prepaid by the industry member by common carrier; and

(II) may not be shipped by United States mail directly to the department's central administrative warehouse office.

(B) A department sample may not be shipped to any other location within the state.

(vi) A department sample submitted to the department shall be accompanied by a letter from the industry member:

(A) clearly identifying the product as a "department sample"; and
 (B) clearly stating the FOB case price of the product.

(vii) (A) The department may transfer listed items from current stock for use as comparison control samples or to verify product spoilage as considered appropriate.
 (B) Each sample transferred under Subsection (4)(c)(vi)(A) shall be charged back to the respective industry member.

(viii) The department shall:
 (A) account for, label, and record all department samples received or transferred;
 (B) account for the department sample's disposition; and
 (C) maintain a record:
 (I) of the samples and their disposition; and
 (II) for a two-year period.

(ix) The department shall affix to each bottle or container a label clearly identifying the product as a "department sample".

(x) A department sample delivered to the department or transferred from the department's current stock shall be disposed of at the discretion of the department in one of the following ways:
 (A) tested and analyzed with the remaining contents destroyed under controlled and audited conditions established by the department;
 (B) entire contents destroyed under controlled and audited conditions established by the department;
 or
 (C) added to the inventory of the department for sale to the public.

(xi) Persons other than authorized department officials may not be in possession of department samples except as otherwise provided.

(d) Samples of beer may be provided by a beer industry member to a retailer under the conditions listed in this Subsection (4)(d).

(i) Samples of beer may be provided by an industry member only to a retailer who has not purchased the brand of beer from that industry member within the last 12 months.

(ii) For each retailer, the industry member may give not more than three gallons of any brand of beer, except that if a particular product is not available in a size within the quantity limitation an industry member may furnish the next largest size.

(e) Educational seminars may involve an industry member under the conditions listed in this Subsection (4)(e).

(i) An industry member may provide or participate in educational seminars:
 (A) involving:
 (I) the department;
 (II) retailers;
 (III) holders of educational or scientific special use permits;
 (IV) other industry members; or
 (V) employees of the persons listed in Subsections (4)(e)(i)(A)(I) through (IV); and
 (B) regarding such topics as:
 (I) merchandising and product knowledge;
 (II) use of equipment; and
 (III) tours of alcoholic beverage manufacturing facilities.

(ii) An industry member may not pay a department employee's, retailer's, or permittee's expenses or compensate them for attending a seminar or tour described in Subsection (4)(e)(i).

(iii) (A) A liquor industry member for purposes of this Subsection (4)(e)(iii) includes an industry member for:
 (I) wine;
 (II) heavy beer; and
 (III) on or after October 1, 2008, a flavored malt beverage.

(B) A liquor industry member may conduct a tasting of the industry member's liquor products:
 (I) for the department, at the department's request; and
 (II) for licensed industry representatives, but only at the department's central administrative warehouse office.

(C) The industry member may only use department or industry representative samples when conducting any tasting of the industry member's products.

(iv) A beer industry member may conduct tastings of beer products for a licensed beer retailer either at:

- (A) the industry member's premises; or
- (B) a retail establishment.

(v) Except to the extent authorized by commission rule, an alcoholic beverage industry member may not conduct tasting or sampling activities with:

- (A) a retailer; or
- (B) a member of the general public.

(f) A beer industry member may participate in beer retailer association activities to the extent authorized by 27 C.F.R. Sec. 6.100.

(g) (i) An industry member may contribute to charitable, civic, religious, fraternal, educational, or community activities.

(ii) A contribution described in Subsection (4)(g)(i) may not be given to influence a retailer in the selection of the alcoholic beverage products that may be sold at these activities and events.

(iii) An industry member or retailer violates this section if:

(A) the industry member's contribution described in Subsection (4)(g)(i) influences, directly or indirectly, the retailer in the selection of alcoholic beverage products; and

(B) a competitor's alcoholic beverage products are excluded in whole or in part from sale at the activity or event.

(h) (i) An industry member may lease or furnish equipment listed in Subsection (4)(h)(ii) to a retailer if:

- (A) the equipment is leased or furnished for a special event;
- (B) a reasonable rental or service fee is charged for the equipment; and
- (C) the period for which the equipment is leased or furnished does not exceed 30 days.

(ii) This Subsection (4)(h) applies to the following equipment:

- (A) a picnic pump;
- (B) a cold plate;
- (C) a tub;
- (D) a keg box;
- (E) a refrigerated trailer;
- (F) a refrigerated van; or
- (G) a refrigerated draft system.

(i) (i) A liquor industry member for purposes of this Subsection (4)(i) includes an industry member for:

- (A) wine;
- (B) heavy beer; or
- (C) on or after October 1, 2008, a flavored malt beverage.

(ii) A liquor industry member may assist the department in:

- (A) ordering, shipping, and delivering merchandise;
- (B) new product notification;
- (C) listing and delisting information;
- (D) price quotations;
- (E) product sales analysis;
- (F) shelf management; and
- (G) educational seminars.

(iii) (A) Subject to Subsection (4)(i)(iii)(B), a liquor industry member may, for the purpose of acquiring new listings:

- (I) solicit orders from the department; and
- (II) submit to the department samples of their products under Subsection (4)(c) and price lists.

(B) An industry member may not solicit either in person, by mail, or otherwise, any state store personnel for the purpose or with the intent of furthering the sale of a particular brand or brands of alcoholic beverage product as against another brand or brands.

(iv) (A) Any visitations to a state store or package agency by an industry member shall be confined to the customer areas of the store unless otherwise approved.

(B) Calls on the state warehouse by industry members are to be confined to the office area only unless otherwise approved.

(v) A beer industry member may assist licensed retailers in:

- (A) ordering, shipping, and delivering beer merchandise;

- (B) new product notification;
- (C) listing and delisting information;
- (D) price quotations;
- (E) product sales analysis;
- (F) shelf management; and
- (G) educational seminars.

(vi) A beer industry member may, for the purpose of acquiring new listings:

(A) solicit orders from licensed retailers; and

(B) submit to licensed retailers samples of their beer products under Subsection (4)(c) and price lists.

(5) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by paying or crediting the retailer for any advertising, display, or distribution service:

(a) as defined in and to the extent restricted by 27 C.F.R. Sections 6.51 through 6.56; and

(b) subject to the exceptions:

(i) for newspaper cuts listed in 27 C.F.R. Sec. 6.92; and

(ii) for advertising services listed in 27 C.F.R. Sec. 6.98.

(6) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by guaranteeing any loan or the repayment of any financial obligation of the retailer.

(7) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any beer from the industry member to the exclusion in whole or in part of any beer products sold or offered for sale by other persons by extending to any retailer credit for a period in excess of 15 days from the date of delivery to the date of full legal discharge of the retailer through the payment of cash or its equivalent, from all indebtedness arising from the transaction, so long as that beer purchased or delivered during the first 15 days of any month is paid for in cash or its equivalent on or before the 25th day of the same month, and beer purchased or delivered after the 15th day of any month is paid for in cash or its equivalent on or before the 10th day of the next succeeding month.

(b) First party in-state checks are considered cash payment if the checks:

(i) are honored on presentment; and

(ii) received under the terms prescribed in Subsection (7)(a).

(c) An extension of credit for product purchased by an industry member to a retailer whose account is in arrears does not constitute a violation of Subsection (7)(a) if the retailer pays in advance or on delivery an amount equal to or greater than the value of each order, regardless of the manner in which the industry member applies the payment in its records.

(8) (a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to induce any retailer to purchase any alcoholic beverages from the industry member or from the department to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by requiring:

(i) the department to take and dispose of a certain quota of any alcoholic products; or

(ii) a beer retailer to take and dispose of a certain quota of any beer products.

(b) (i) It is an unlawful means to induce to require:

(A) the department to purchase one product in order to purchase another; or

(B) a beer retailer to purchase one beer product in order to purchase another.

(ii) This Subsection (8)(b) includes:

(A) the requirement to take a minimum quantity of a product in standard packaging in order to obtain the same product in some type of premium package such as:

(I) a distinctive decanter; or

(II) a wooden or tin box; or

(B) combination sales if one or more products may be purchased only in combination with other products and not individually.

(c) This Subsection (8) does not preclude the selling, at a special combination price, two or more kinds or brands of products so long as the department or beer retailer:

(i) has the option of purchasing either product at the usual price; and

(ii) is not required to purchase any product the department or beer retailer does not want.

(d) An industry member may package and distribute alcoholic beverages in combination with other nonalcoholic items or products.

(e) The combination package shall be designed to be delivered intact to the consumer and the additional cost incurred by the industry member shall be included in the cost to the department or beer retailer.

32A-12-604. COMMERCIAL BRIBERY.

This section adopts and makes applicable to all industry members, including beer industry members, doing business in this state 27 U.S.C. Section 205(c) and 27 C.F.R. Sections 10.1 through 10.54 which make it unlawful for any industry member, directly or indirectly or through an affiliate, to induce a wholesaler or retailer engaged in the sale of alcoholic beverages to purchase the industry member's products, to the complete or partial exclusion of alcoholic beverages sold or offered for sale by other persons, by commercial bribery, or by offering or giving a bonus, premium, compensation, or other thing of value, to any officer, employee, or representative of the wholesaler or retailer.

32A-12-605. CONSIGNMENT SALES.

(1) This section adopts and makes applicable to all industry members, including beer industry members, doing business in this state 27 U.S.C. Section 205(d) and 27 C.F.R. Sections 11.1 through 11.46, which make it unlawful for an industry member, directly or indirectly or through an affiliate to sell, offer for sale, or contract to sell to any wholesaler or retailer engaged in the sale of alcoholic beverages, or for any wholesaler or retailer to purchase, offer to purchase, or contract to purchase any of those products on consignment or under conditional sale or with the privilege of return or on any basis otherwise than a bona fide sale, or where any part of the transaction involves, directly or indirectly, the acquisition by that person from the wholesaler or retailer or that person's agreement to acquire from the wholesaler or retailer other alcoholic beverages, if the sale, purchase, offer, or contract is made in the course of interstate or foreign commerce, or if the person or wholesaler or retailer engages in such practice to an extent so as substantially to restrain or prevent transactions in interstate or foreign commerce in any of those products or if the direct effect of the sale, purchase, offer, or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any of those products to the wholesaler or retailer in interstate or foreign commerce.

(2) This section does not apply to transactions involving solely the bona fide return of merchandise for ordinary and usual commercial reasons arising after the merchandise has been sold.

32A-12-606. UNLAWFUL ACTS INVOLVING CONSUMERS.

(1)(a) It is unlawful for any industry member, directly or indirectly or through an affiliate, to give away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the department and local industry representative licensees to the extent authorized by this title.

(b) This Subsection (1) does not preclude an industry member from serving its alcoholic products to others at private social functions hosted by the industry member in the member's home or elsewhere so long as the product is not served:

(i) as part of a promotion of the industry member's products; or

(ii) as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) It shall be unlawful for any industry member or retailer, directly or indirectly or through an affiliate, to engage in any advertisement or promotional scheme that requires the purchase or sale of an alcoholic beverage, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity.

(3) It shall be unlawful for any industry member or retailer, directly or indirectly or through an affiliate, to pay, give, or deliver to any person any money or any other thing of value, including rebates, refunds, or prizes, based upon the purchase, display, use, sale, or consumption of alcoholic beverages.

(4) It shall be unlawful for any industry member or retailer to sponsor or underwrite any athletic, theatrical, scholastic, artistic, or scientific event that:

(a) overtly promotes the consumption of alcoholic products;

(b) offers alcoholic products to the general public without charge; or

(c) takes place on the premises of a school, college, university, or other educational institution.